

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 795 of 1998

Judgment reserved on 25.8.2006

Date of decision 5.9.2006

D.K. Agnihotri

...Petitioner.

Versus

The State Bank of India & others

...Respondents.

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?

**For the petitioner : Mr. Rajiv Sharma, Senior Advocate, with
M/s. Ashutosh Burathoki and Surinder
Sharma, Advocates.**

**For respondents : Mr. K.D. Sood, Advocate, with Ms. Sunita
Sharma, Advocate.**

Surjit Singh, Judge

Through the present writ petition the petitioner has sought quashing of orders dated 3rd July, 1997 and 20th August, 1998, whereby he has been ordered to be removed from the service of respondent No. 1, by way of punishment. In the alternative a direction has been sought for holding fresh inquiry in which the writ petitioner should be afforded an opportunity to engage a defence assistant of his choice.

Whether reporters of Local Papers may be allowed to see the Judgment?

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2. Brief facts leading to the presentation of this writ petition are that the petitioner was initially employed as Clerk-cum-Cashier with respondent No. 1. Thereafter he was promoted as Head Clerk and then as Assistant Manager. In the year of 1988 he was posted in the capacity of Assistant Manager in Kaza Branch of respondent No. 1 – Bank. On further promotion, he was posted as Branch Manager in Kaza Branch itself on 27th August, 1990. He remained posted as such in the said Branch up to August, 1993. On 27.10.1993 the petitioner was placed under suspension for certain alleged acts of misconduct committed by him during his posting as Branch Manager at Kaza. Charge-sheet was served upon the petitioner on 6.12.1994. It consisted of various counts. The pith and substance of all the counts of charge was that while working as Branch Manager at Kaza and having custody of STDR Books, the writ petitioner removed eight forms of STDRs from the STDR Books and without receiving any money against those removed forms, filled in various amounts of money aggregating Rs.26.75 lacs and also filled in the names of certain persons in those forms and then signed those forms. Then treating those forms (STDRs) as genuine, he advanced loans or sanctioned cash credit facilities in favour of the persons, whose names were filled in those forms, showing the said STDRs as securities furnished by the loanees. In some of the cases the loans / cash credit facilities, sanctioned by him, were in excess of the upper limit fixed by the Bank for sanction of loans / cash credit facility by Managers. This way the petitioner was alleged to have committed various acts of misconduct, like faking the STDRs, using the faked STDRs as genuine, advancing loans and cash credit facilities against the security of

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those STDRs and sanctioning loans / cash credit facilities in excess of the limit upto which he was authorized to sanction loans / cash credit facilities.

3. After the service of the charge-sheet, regular inquiry was conducted. The Inquiry Officer recorded the evidence adduced by the presenting side, i.e. respondent No. 1, as also the writ petitioner and submitted a report that all the seven charges stood proved either wholly or in part. Respondent No. 2, after supplying copy of the inquiry report and affording an opportunity to the writ petitioner to make representation, inflicted the penalty of removal from service. The writ petitioner filed an appeal to respondent No. 1, which was dismissed.

4. A criminal case was also got registered against the writ petitioner with Kaza Police. Report was filed by the Police against the writ petitioner after completing the investigation. The learned Chief Judicial Magistrate, Kinnaur tried the writ petitioner for offences, under Sections 420, 465, 468 and 471 of the Indian Penal Code and at the end of the trial, acquitted him with the finding that the charge did not stand proved beyond reasonable doubt.

5. Respondents have filed reply, wherein it is stated that the report of the Inquiry Officer is founded on unflinching evidence. It has been stated that based on the findings of the Inquiry Officer, the disciplinary authority held the writ petitioner guilty and awarded the punishment of removal from service in accordance with the service rules, governing the petitioner.

6. Though various grounds have been taken in the writ petition to seek the quashing of the orders of punishment, the learned counsel for

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the writ petitioner, while addressing arguments, confined his submissions only to the following:-

- (i) The writ petitioner was not afforded reasonable opportunity to defend himself;
- (ii) There is no application of mind by the Inquiry Officer and that he has simply made reference to the submissions of the writ petitioner and the respondents and then given his findings without analyzing the material on record or appreciating the submissions;
- (iii) The appellate authority, while passing the order of dismissal of appeal against the order of penalty, did not take into account the points raised in the memorandum of appeal;
- (iv) The disciplinary authority, while holding the writ petitioner guilty and passing the order of penalty, did not take into account the submissions contained in the representation, which the petitioner made after receipt of inquiry report'
- (v) The writ petitioner having been acquitted of criminal charges, founded on the same allegations as the charge-sheet for departmental proceedings, the disciplinary authority was not justified in holding the writ petitioner guilty, on the basis of the inquiry report;
- (vi) Two other employees of the respondents, against whom disciplinary proceedings were initiated for acts of misconduct, almost similar to those for which the writ petitioner has been penalized, have been dealt with leniently and awarded minor penalties and thus the action of the respondents is violative of Article 14 of the Constitution;
- (vii) Punishment is disproportionate.

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7. It was submitted on behalf of the petitioner that in the course of regular inquiry, the writ petitioner was not afforded effective opportunity of defending himself, inasmuch as when the evidence was received, his defence assistant was not present and his request for adjournment of inquiry proceedings, on account of the absence of his defence assistant, was turned down without assigning any reason.

8. Original record of the inquiry has been produced by the respondents for inspection by the Court. The record shows that it was on 11.9.1996 at Kaza that the evidence of the presenting side as also the evidence adduced by the writ petitioner was recorded. Summary of the proceedings, recorded by the Inquiry Officer on the aforesaid date, shows that when the writ petitioner was asked by the Inquiry Officer whether his defence assistant, stationed at Chandigarh, had come or not, he (the writ petitioner) informed that he could not obtain the consent of his proposed defence assistant to defend him in the case and also that the proposed defence assistant (Shri Amar Pal) was busy in connection with a strike call given by SPIOA for 6th September, 1996, which had later on been withdrawn and that thereafter the writ petitioner did not contact him (the proposed defence assistant). The summary further records that it was decided by all the officials present that the evidence present be recorded and that rest of the proceedings would be conducted later on at Manali. On that day the presenting side examined one witness, while the writ petitioner examined three. The writ petitioner cross-examined the witness produced by the presenting side. The witness examined by the presenting side did not say anything from his personal knowledge, but simply proved the copies of the relevant record, which had already been admitted to be true, correct

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and genuine by the writ petitioner on an earlier day, when he was questioned whether he had received all the documents, list of witnesses and whether the documents were genuine and correct. This fact is also borne out from the record of the inquiry proceedings produced by the respondents.

9. The aforesaid summary of the proceedings conducted on 11.9.1996 at Kaza belies the claim of the writ petitioner that he sought adjournment because of the absence of his defence assistant, but the adjournment was not granted. As a matter of fact, the record not only belies his claim but also shows that there was no occasion for him to have made such a request, because by then he had not even taken the consent of the proposed defence assistant to defend him in the inquiry and also he had not even contacted him after 6th September, 1996. This apart, the summary further records that all the officials present (which implies the writ petitioner included, because he is referred to as Officer Proceeded Against – OPA) agreed that the evidence produced by the parties on that day be admitted. In any case, no prejudice can be said to have been caused to the writ petitioner on account of the recording of the evidence adduced by the presenting side on that day, because the witness produced by the presenting side, proved only genuineness of the copies of the documents upon which the presenting side relied upon, which the writ petitioner had already admitted to be correct and genuine at the start of the inquiry, as noticed hereinabove.

10. For the foregoing reasons, the plea that the writ petitioner was not afforded any effective opportunity to defend himself, is rejected being merit-less.

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11. Inquiry report has been produced by the respondents. Its reading shows that though the Inquiry Officer has mentioned the submissions of the presenting Officer and the writ petitioner (Officer Proceeded Against) at length but his own analysis of the submissions and the evidence is not so detailed, yet it cannot be said that he has not applied his mind. He has taken note of the details of various articles of charge, the evidence made available to him to prove the charge by the presenting side and the evidence adduced by the writ petitioner to counter the evidence of the presenting side and has then recorded his findings. The documents and other evidence that was produced before the Inquiry Officer, which was shown to this Court during the course of hearing of the petition, support the findings of the Inquiry Officer that the writ petitioner, who had the custody of STDR Books, removed eight forms of STDRs and converted those forms into securities by entering therein the names of certain persons and varying amounts of money, though there was no corresponding entry in the books and other record maintained by the bank that those persons had deposited the amounts of money mentioned in those STDRs, and then granted overdraft facilities to the persons named in those STDRs against the security of those STDRs and the amounts up to which those persons were allowed to avail the cash credit facilities, were beyond the upper limit of the power of sanctioning cash credit facilities conferred upon the writ petitioner.

12. As a matter of fact, the inquiry report and other record show that the writ petitioner himself admitted that he had converted eight forms into STDRs without receiving the amounts mentioned therein and then used those STDRs as securities against the cash credit facilities, granted to the persons named in those STDRs. The explanation offered by him was that a

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Budhist Monk by the name of Shri T.Zumed Tanzin Dorjee had been expecting remittance of three lacs U.S. Dollars, equivalent to rupees one crore from some charitable institution of Paris for construction of new complex of a monastery and out of that amount he wanted to invest rupees eighty-eight lacs in eight parts, each consisting of rupees eleven lacs, in fixed deposit and he being a believer in numerology, wanted to have some 'lucky numbers' of the STDRs and that considering the fact that a huge amount of money would be coming to his Branch by way of investment, he showed the STDR Books to that monk, who selected STDR Nos. 659039 to 659045 from one Book and 659183 from another. The writ petitioner removed those forms from the STDR Books and waited for the money. However, the money was not received. In the meanwhile, the writ petitioner had submitted certain proposals to the higher authorities for advancing loans to some local people, who wanted to construct hotels, as Kaza area, which was closed for foreign tourists till then, had been opened, but despite lot of correspondence when the matter was getting delayed, he provided money to the expectant loanees by sanctioning cash credit facilities in their favour, as on account of his long stay in Kaza area, he had come to know that the local people were quite honest and would return the money as per promise. The higher authorities ultimately refused to sanction the loans. The writ petitioner became panicky as he had granted cash credit facilities beyond the upper limit of his power to grant such facilities and feared that he might be taken to task for sanctioning the overdraft facilities beyond his authority and that too without taking any security and so he used the aforesaid eight STDR forms and entered in those forms the names of the persons to whom cash credit facilities had been provided as also the

amounts of money equivalent to the money they had overdrawn and entered the same as securities in the relevant book.

13. First of all the defence is nothing but a cock and bull story. No prudent man, leave alone a banker, would take such a big risk of allowing over-drawal of as huge an amount as rupees twenty-six lacs. And secondly even if it be assumed that the explanation is correct, that would not absolve the writ petitioner of the charge. The writ petitioner was an employee of the respondents, holding a responsible position of Branch Manager. He had been entrusted with the cash and the important documents like STDR forms. He was supposed to be knowing that an STDR cannot be issued without receiving the money equivalent to the amount filled therein. Further he did not have the authority to sanction over-draft facilities beyond certain limit, but he did so knowing full well that he did not have such an authority. May be that no pecuniary loss was caused to the bank and all those persons to whom over-draft facilities had been granted, returned the over-drawn money together with interest and the bank earned profit of rupees six lacs on account of interest, as claimed by the writ petitioner, but that in no way lessens the gravity of the act of misconduct committed by the writ petitioner. He took a big risk rather played a gamble, putting huge amount of money, belonging to his employer, at stake and that too not only without the explicit or even implicit approval of the higher authorities, but also contrary to and in violation of the specified limit of his authority.

14. Thus ground (ii), raised by the learned counsel for the petitioner, is also without merit and is, therefore, rejected.

15. The appellate authority has passed a speaking order, which indicates that there had been due application of mind on its part. Writ

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petitioner's plea that he had not been afforded effective opportunity of defending himself, has been particularly touched. The appellate authority has taken into consideration the report of the Inquiry Officer, the order passed by the disciplinary authority as also various grounds, raised by the writ petitioner in the appeal. The record of the disciplinary proceedings belies the contention that the disciplinary authority also did not consider and take into account the submissions made by the writ petitioner in his representation. What the writ petitioner had submitted to the disciplinary authority in his representation as also to the appellate authority in the grounds of appeal, besides the plea that he was not afforded effective opportunity to defend himself, was that no pecuniary loss had been caused to the bank on account of the alleged faking of the STDRs and the granting of the cash credit facilities to various persons against the security of those STDRs. As noticed hereinabove, the plea, even if assumed to be correct, does not absolve the writ petitioner of the charge. Whether the act of misconduct led to any pecuniary loss or not, is totally irrelevant. What was required to be seen by the disciplinary authority and the appellate authority, was whether the writ petitioner had committed the act of misconduct he had been charged with and as noticed hereinabove, the evidence on record as also the inquiry report established that he had committed such acts.

16. For the foregoing reasons, grounds (iii) and (iv) are also held to be devoid of merit.

17. As regards ground (v), learned counsel for the writ petitioner submitted that besides having been proceeded against departmentally for the alleged acts of misconduct, the writ petitioner had been reported against to the police, who after investigation filed a challan in the Court of learned

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Chief Judicial Magistrate, Kinnaur, who, on conclusion of trial, has acquitted the writ petitioner. Copy of the judgment of the learned Chief Judicial Magistrate, acquitting the writ petitioner, has been placed on record. A perusal of the judgment shows that the allegations, on which the writ petitioner was tried, were similar to those on which he was proceeded against departmentally. However, he was acquitted by the Court, because the Court felt that the petitioner did not have the requisite mens rea for the commission of the offence of forgery and use of forged documents, the offence with which he had been charged and for holding such view, what weighed heavily with the Court was the fact that no pecuniary loss had been caused to the bank by the act of converting the STDR forms into securities and the grant of cash credit facilities against the security of those STDRs. In the departmental proceedings the accusation was not that the writ petitioner committed any offence, but that he committed acts of misconduct. An act of misconduct is different from a criminal offence. An employee can be said to have committed an act of misconduct, even if his intention may not be dishonest or bad. He would be guilty even if he is negligent, careless, defiant, disobedient or if he conducts himself contrary to the instructions and directions of his employer or exceeds the limit of his specified authority.

18. Learned counsel for the petitioner, placing reliance upon a Division Bench judgment of the Hon'ble Supreme Court in **G.M. Tank vs. State of Gujarat and others**, [(2006) 5 SCC 446] urged that where departmental inquiry and criminal trial are based on the same set of facts, charges, evidence and witnesses and the employee is honourably acquitted by the Criminal Court, finding to the contrary recorded in the departmental

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proceedings is unjust, unfair and oppressive. The facts of the case before the Hon'ble Supreme Court were totally different. The employee had been charged for acquisition of assets disproportionate to the known sources of his income. In other words, both in the criminal trial as also in the departmental proceedings the accusation proceeded on the assumption that the employee was corrupt and by abusing his position as public servant, he had amassed wealth. In other words, dishonesty of the employee was the foundation of accusation in both the proceedings.

19. Here the facts are different. As noticed hereinabove, the charge against the writ petitioner in the Criminal Court was that he had forged the STDRs and then used those STDRs as genuine to cheat the bank. In the departmental proceedings, no doubt the charge was that the writ petitioner had prepared bogus STDRs and used those bogus STDRs as genuine by entering them as securities for grant of over-draft facilities. But in the later case the act of the writ petitioner amounted to misconduct irrespective of the fact whether he had the requisite dishonest or fraudulent intention, necessary for constituting criminal offence of forgery or not. Further-more, a reading of the judgment of the Criminal Court shows that there was not enough evidence in support of the charge that the writ petitioner had removed the STDR forms from the STDR Books, forged them and then used them as genuine STDRs for granting cash credit facilities. The judgment does not show as to what defence the writ petitioner had taken in the course of trial. In the course of departmental inquiry, the department produced various documents, including entries in the ledger books, pertaining to the over-draft facilities accounts of eight persons, to whom such facilities had been granted against the security of the bogus

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STDRs and those entries, which are admittedly signed by the writ petitioner, prove that the bogus STDRS were used as securities for grant of cash credit facilities. As noticed hereinabove, the writ petitioner admitted that he took out eight forms of STDRs and then converted them into STDRs and used them as securities, though he has offered an explanation, which is neither probable nor would have mitigated the act of misconduct, even if it were proved to be correct, as explained hereinabove.

20. A three Judges Bench of the Hon'ble Supreme Court in **Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corpon. Ltd. Haldia and others**, [(2005) 7 SCC 764], while dealing with the question as to what effect, if any, of acquittal of an employee by Criminal Court will have on the departmental proceedings, has observed as follows in para 11:-

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on

the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.”

21. It is stated in the writ petition that two other employees, named S.R. Khatri and K.K. Sharma, of the respondents, who had been charged with and found guilty of acts of misconduct similar to those with which the writ petitioner was charged and has been found guilty, were dealt with leniently. It is stated that the disciplinary authority had imposed penalty of dismissal from service upon both the above-named employees, but the appellate authority reduced the penalty and imposed minor penalties. This Court had ordered the respondents to produce the record pertaining to the disciplinary proceedings of the aforesaid two employees. The record has not been produced. However, in the writ petition itself the details of the acts of misconduct with which the aforesaid two employees were charged, are given. Shri S.R. Khatri is stated to have advanced a loan of Rs.3.5 lacs in favour of his own wife against the security of a forged STDR. The second employee Shri K.K. Sharma is stated to have advanced loan for purchase of a truck and though no truck had been purchased with the loan amount, entries were made in the bank record that the truck had been hypothecated with the bank.

22. No doubt the allegation against S.R. Khatri, as per averments in the writ petition, was similar to the allegation against the writ petitioner, but the writ petitioner cannot claim that he should also be dealt with leniently in the same way as S.R. Khatri was dealt with or that if he is not dealt with in the same fashion, it will amount to contravention of Article 14 of the Constitution. The respondent is a body corporate. It acts through its functionaries and servants. One functionary or servant may be lenient in his approach towards the erring employees, the other may not be. Therefore, this cannot be said to be a case of discrimination or case of violation of Article 14 of the Constitution of India. It is a matter of common knowledge that different accused tried for and held guilty of similar offences, at different trials, are awarded different punishments and at times by the same Judges. An accused awarded higher punishment cannot ask for reduction of his sentence to the same quantum of punishment which is imposed upon some other accused, found guilty of similar offence in some earlier case.

23. For the foregoing reasons, point (vi) is also held to have no merit in it.

24. Punishment imposed by the disciplinary authority upon the writ petitioner cannot be said to disproportionate. The act of misconduct committed by the writ petitioner is so grave that it had very high risk of causing enormous loss to the employer of the writ petitioner. Besides, the writ petitioner disobeyed the instructions regarding issue of STDRs and the grant of cash credit facilities. He went beyond the upper limit of his power in granting the cash credit facilities to eight persons. By his act he also committed the act of breach of faith, inasmuch as he issued STDRs without

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the persons named therein depositing the amounts mentioned in the STDRs.

25. More over, as held by the Hon'ble Supreme Court in **Chairman & Managing Director, United Commercial Bank & others vs. P.C. Kakkar**, [2003 (4) SCC 364] and **Union of India & Anr. Vs. K.G. Soni**, [JT 2006 (7) SC 509, punishment imposed by a disciplinary authority is not subject to judicial review, unless it shocks the conscience of the Court. Thus point (vii) also does not have any force.

26. As a result of the above discussion, the writ petition is dismissed.

September 5, 2006 (BC)

**(Surjit Singh)
Judge**